



August 27, 2001

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2001-3779

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151170.

The Arlington Police Department and the City of Arlington (the "city") received two requests for information relating to a local business establishment and to five named individuals. The first request is for the personnel files of four police officers and for police records relating to the business and to an individual identified as a former director of human resources. The second request is for correspondence between the city police and code enforcement departments regarding the local business. You inform this office that the majority of the requested information is being released. We assume that this information includes any responsive records relating to the former human resources director, as you make no reference to this aspect of these requests. If you have not released responsive information that relates to this individual, then you must do so immediately. *See Gov't Code §§ 552.301, .302.* You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

We first address your arguments under section 552.108 of the Government Code with regard to the requested records concerning the local business. Section 552.108, the "law enforcement exception," excepts from public disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection,

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. *See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. See Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In this instance, the records at issue under section 552.108 concern two separate matters. You submitted a responsive police report. You inform this office that the report relates to an ongoing narcotics investigation. The city attorney’s office submitted records that are responsive to the request for correspondence between the police and code enforcement departments. The city attorney informs us that these records relate to a pending criminal prosecution involving noise violations. Based on these representations and our review of the information at issue, we find that the release of information relating to these pending cases would interfere with the detection, investigation, or prosecution of crime. See Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. Section 552.108(c) requires the release of basic information about both of the pending cases to which the records at issue pertain. The city must release basic information, including detailed descriptions of the respective offenses, even if this information does not actually appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the information concerning the two criminal cases under section 552.108(a)(1).

Next, we address your arguments with regard to the personnel records of the four police officers. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. See 8 U.S.C. § 1324a(b)(5); see also 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the city must withhold the marked Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

A W-4 form is confidential under section 6103 of title 26 of the United States Code. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). The city must withhold the marked W-4 form under section 6103(a) of the Internal Revenue Code.

Information pertaining to participation in the Texas Municipal Retirement System is made confidential under section 855.115 of the Government Code. Section 855.115(a) provides in part that "information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101," subject to certain exceptions that are not applicable here. We have marked the information that the city must withhold under section 855.115 of the Government Code.

Chapter 1703 of the Occupations Code codifies the Polygraph Examiners Act. *See* Occ. Code § 1703.001. Section 1703.306 of the Occupations Code provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The submitted records contain information relating to polygraph examinations that section 1703.306 makes confidential. The requestor is not a person to whom section 1703.306 grants access to this information. We have marked the information that the city must withhold under section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the common law right to privacy. Common law privacy protects private facts about individuals. Information must be withheld under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), this office stated that

all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Id. at 3. We also concluded that the determination of whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on a case-by-case basis. *Id.* at 4. In prior decisions, this office has determined that although financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We have marked personal financial information that must be withheld under section 552.101 of the Government Code. We also have marked parts of other documents that constitute personal financial information. The city also must withhold this marked information under section 552.101, unless it relates to a transaction with a governmental body. Information relating to a transaction with a governmental body is not confidential under section 552.101 and must be released.

Common law privacy also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also must be withheld under section 552.101 in conjunction with common law privacy. See Open Records Decision No. 659 at 4-5 (1999); see also Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked a small amount of private information that the city must withhold under section 552.101. We also have marked an item of information that is not private under section 552.101 and must be released.

The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. See Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). The MPA also includes provisions that govern the disclosure of information that it encompasses. See Occ. Code §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code.² We have marked the submitted records that are governed by the MPA. These records may be released only if the MPA permits the city to do so.

You also raise section 552.117 of the Government Code. Under section 552.117(2), the city must withhold a peace officer's current and former home addresses and telephone numbers, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. We have marked the information that the city must withhold under section 552.117(2).

²See Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. See Act of May 13, 1999, 76th Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

Section 552.119 of the Government Code excepts from disclosure “[a] photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . the release of which would endanger the life or physical safety of the officer.” Gov’t Code § 552.119(a). This office has held that a claim under section 552.119 does not require a threshold showing that release of a photograph would endanger the officer depicted. *See* Open Records Decision No. 502 (1988). We have marked photographs of peace officers that the city must withhold under section 552.119.

Lastly, section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). We have marked the information that the city must withhold under section 552.130.

In summary, the city may withhold the information relating to the two pending criminal cases under section 552.108(a)(1), except for the basic information that the city must release under section 552.108(c). The records relating to the four officers contain information that is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, section 6103 of title 26 of the United States Code, section 855.115 of the Government Code, and section 1703.306 of the Occupations Code. Personal financial information that does not involve a transaction with a governmental body is confidential under section 552.101 in conjunction with common law privacy. The submitted records also contain other private information that the city must withhold under section 552.101. The release of medical records is governed by the Medical Practice Act. The city must withhold a peace officer’s home address and telephone number, social security number, and information that reveals whether the officer has family members under section 552.117(2). Photographs of peace officers are excepted from disclosure under section 552.119. Texas driver’s license information must be withheld under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

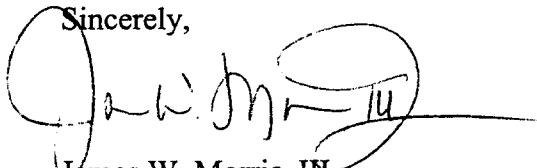
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 151170

Enc: Marked documents

c: Mr. Jeff Prince
Fort Worth Weekly
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(w/o enclosures)